



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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Secretary of Natural Resources

EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON DECEMBER 4, 2007

MINUTE NO.7 – Tier III Canoeable Waters

Alan Pollock, manager of the Office of Water Quality Programs, advised the Board that a fast track rulemaking would be appropriate for Exceptional State Waters designation of a segment of Little Stony Creek in Scott County and the North River in Augusta County, both of which flow through U.S. Forest Service land. The amendment to the Water Quality Standards regulation is expected to be non-controversial because the U.S. Forest Service, the only impacted riparian landowner, supports these designations. No comment was received from the Forest Service or potentially impacted localities during the 60 day opportunity for comment previously authorized by the Board.

Mr. Pollock then reviewed the findings of the required staff site visit to the nominated waters for confirmation that the candidate waters met the exceptional state waters eligibility criteria. From the site visit of the North River, staff determined that the nominated segment met the exceptional environmental setting and the exceptional recreational opportunity criteria necessary for designation. Staff concluded that the nominated segment of Little Stony Creek provided opportunities for outstanding outdoor recreational activities but expressed concern that litter and graffiti observed in areas easily accessible to the public detracted from otherwise attractive surroundings. Board member Walker stated his disappointment that the federal government had not done more to control litter and abuse of the area. Mr. Pollock responded that recent communication with the Forest Ecology Group Leader for the George Washington and Jefferson National Forests indicates efforts are underway to improve conditions on Little Stony Creek, including the local government setting a higher priority for litter removal in the watershed.

Mr. Pollock informed the Board that the nominated segment of North River is currently assessed as impaired for aquatic life use due to violations of the pH criterion and the source of the impairment is thought to be atmospheric acid deposition. Although this section of the North River currently has a special standard for a pH range of 6.5-9.5 established for limestone streams, the Forest Service has informed staff that this special pH standard is misapplied to this segment of the North River since it has no limestone bedrock. The pH range for this segment is proposed for amendment during the current triennial review of the Water Quality Standards regulation for correction to 6.0 – 9.0 which may result in the segment being delisted as impaired during subsequent assessments. However, even if the river is not removed from the impaired waters list, it is still eligible for Exceptional State Waters designation due to both its exceptional environmental setting and recreational opportunities.

Board Decision:

Based on the briefing materials and the staff presentation, the Board approved the following recommendations by unanimous vote:

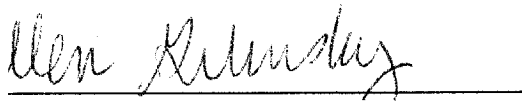
1. That the Board authorize the Department to promulgate the following amendment to 9 VAC ~~25-260-30.A.3.c~~ for public comment using the fast-track process established in § 2.2-4012.1 of the Administrative Process Act for regulations expected to be non-controversial.

Little Stony Creek in Scott County from Bark Camp Lake dam to its confluence with Bakers Branch.

North River in Augusta County from the Staunton Reservoir dam to the first crossing with National Forest lands boundary (near Girl Scout Camp May Flather).

The Board's authorization should also be understood to constitute its adoption of the regulation at the end of the public comment period provided that (i) no objection to use of the fast-track process is received from 10 or more persons, or any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, and (ii) the Department does not find it necessary, based on public comments or for any other reason, to make any changes to the proposal.

2. That the Board authorize the Department to set an effective date effective upon filing notice of Environmental Protection Agency approval with the Registrar of Regulations after close of the 30-day public comment period provided (i) the proposal completes the fast-track rulemaking process as provided in § 2.2-4012.1 of the Administrative Process Act and (ii) the Department does not find it necessary to make any changes to the proposal.
3. Should the proposal fail to complete the fast-track rulemaking process as provided in § 2.2-4012.1 of the Administrative Process Act or changes to the proposal be needed, it is recommended that the Board authorize the Director to make the decision under 9 VAC 25-10-30.C. concerning the use of the participatory approach or alternatives.



Ellen Gilinsky, Ph.D.
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